Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at http://about.jstor.org/participate-jstor/individuals/early-journal-content.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

tion operating under a freeholders' charter.[1] Under an amendment adopted in 1911, the city council is given power "to license for purpose of regulation and revenue all and every kind of business transacted in the city; to fix the rates or licenses of the same and to provide for the collection thereof by suit or otherwise." In pursuance of this authorization the Stockton city council adopted an ordinance requiring that every master plumber obtain a license from the city authorities paying therefor $10 annually; providing a form and procedure for obtaining a plumber's license; and making it unlawful to engage in the business of plumbing in the city of Stockton without complying with the terms of the ordinance.

In the Matter of the Application of J. B. Prentice for a Writ of Habeas Corpus,[2] the petitioner was convicted of the crime of conducting a business as master plumber in the city of Stockton without first having obtained a license therefor in accordance with the provisions of the ordinance. Petitioner's claim was that the ordinance was unconstitutional because in conflict with an act of the legislature which regulates the business of plumbing.[3]

The District Court of Appeal, in the Third District, very properly holds that in "municipal affairs" a city, operating under a freeholders' charter, may legislate uncontrolled by general law.[4] A municipal affair is one which refers to the internal business affairs of the municipality.[5] And where the power to impose a license tax for revenue is conferred upon a municipality, the power becomes a municipal affair within the meaning of those words in the constitution.[6] Consequently, ordinances passed for the purpose of revenue are a valid exercise of power, if the municipality has been given such power by its charter.[7] W. C. J.

NEW TRIAL: JUDGMENT MODIFIED ON APPEAL.—Notice of motion for a new trial must be filed within ten days after receiving notice of the entry of judgment by the trial court,[1] unless extended by stipulation of counsel[2] or by order of court, which cannot be for more than thirty days.[3] In *Bond* v. *United Railroads of San*

---

[1] Cal. Stats. 1889, p. 577; Stats. 1905, pp. 832, 859; Stats. Extra Sess. 1911, pp. 274, 279.

[2] (April 14, 1914), 18 Cal. App. Dec. 537.

[3] Cal. Stats. 1885, p. 12; Cal. Stats. 1887, p. 58.

[4] Cal. Const., art. XI, § 6.

[5] Fragley v. Phelan (1899), 126 Cal. 383, 58 Pac. 923. (For a full discussion of the subject, see article on "'Municipal Affairs' in the California Constitution" in 1 Cal. Law Rev. 132.)

[6] Ex parte Braun (1903), 141 Cal. 204, 74 Pac. 780.

[7] Ex parte Helm (1904), 143 Cal. 553, 77 Pac. 453; Ex parte Lemon (1904), 143 Cal. 558, 77 Pac. 455; In re Diehl (1908), 8 Cal. App. 51, 96 Pac. 98.

[1] Cal. Code of Civ. Proc., § 659.

[2] Simpson v. Budd (1891), 91 Cal. 488, 27 Pac. 758; Union Collection Co. v. Oliver (1912), 162 Cal. 755, 124 Pac. 435.

[3] Simpson v. Budd, supra; Burton v. Todd (1886), 68 Cal. 485, 9 Pac. 633; Freese v. Freese (1901), 134 Cal. 48, 66 Pac. 43.

Francisco[4] the question arose as to whether the entry of judgment by the trial court on the going down of a remittitur from the Supreme Court constituted an entry of judgment under the statute referred to. It was held by the Appellate Court for the Third District that it did not, being only a modification of an existing judgment, which, though altered, constituted the only judgment in the case, and that motions for new trial must be made within the statutory period from the original entry, though the judgment at that time was erroneous and was later rendered ineffective as "a final determination of the rights of the parties". Logically it would seem that if the first judgment were rendered ineffective as a final determination, the modification as entered must be finally determinative, at least until further change. The quotation above from the case constitutes the definition of a judgment in the California Code of Civil Procedure,[5] so that this line of reasoning would seem to give a right to move for a new trial after the second entry of judgment, under section 659 of the same code.

The decision in the Bond case has the authority of Brady v. Feisil,[6] which held that the election of a party as to whether he will stand upon the findings is to be made within the allotted time after the first entry of judgment, and that if he elects to rely on them he is not deprived of any right even though on appeal the judgment is reversed, and ordered to be entered for the other party on the findings. This is in accord with the general attitude of the California courts in strictly construing statutes giving a right of new trial, to avoid long continued pendency of actions[7] and to prevent too extended litigation of the same matters.

The case of Brady v. Feisil, supra, has been disapproved by the Supreme Court in department,[8] although a discussion of its merits was expressly avoided in the subsequent rehearing in bank.[9] Where the judgment is reversed and ordered to be entered for the appellant, the old judgment is vacated and a new one entered in its stead, and the respondent should have the right to move for a new trial after such entry, since he was not an aggrieved party in respect to the first judgment except upon the harsh construction that he should have anticipated the decision on appeal. And while upon strict theory he was aggrieved by a small judgment against him, its subsequent increase to a very substantial sum may constitute his first real grievance.

The court in the Bond case suggests that he may give notice of the intent to move for a new trial after the first entry of judgment, and that he probably could have the hearing on the motion

---

[4] (March 17, 1914), 18 Cal. App. Dec. 382. (Rehearing granted by Supreme Court, May 15, 1914.)
[5] § 577.
[6] (1880), 54 Cal. 180.
[7] See Union Collection Co. v. Oliver, supra.
[8] Tuffree v. Stearns Ranchos Co. (1898), 54 Pac. 826.
[9] Tuffree v. Stearns Ranchos Co. (1899), 124 Cal. 306, 57 Pac. 69.

delayed until after the conclusion of the proceedings on appeal. This seems to introduce an element of uncertainty and inconvenience, requiring such a motion in every case to hold the right of new trial open in the event of an adverse decision in the higher court. Such procedure tends to increase litigation and trouble more than would a liberal construction of the statute, which would permit the motion after the judgment had been changed to accord with the decision on appeal. M. K. W.

PAROLE LAW: CALIFORNIA ACT OF 1913: STATUTORY CONSTRUCTION.—The Act of the Legislature entitled "An Act to establish a board of parole commissioners for the parole of and government of paroled prisoners"[1] has been under construction by the California Supreme Court to the case of *Roberts v. Duffy*.[2]

The questions before the court were: (1) whether a prisoner serving a first term was entitled as of right to file an application with the board after serving one year of his sentence; and (2) whether such a prisoner is further entitled of right to a parole, if his prison record has been good. The court answers the first question in the affirmative, the second in the negative.

The provision of the act under which the petitioner claimed his rights, is as follows: "The state board of prison directors of the state shall have power to establish rules and regulations under which any prisoner who is now or hereafter may be imprisoned in any state prison, and who may have served one calendar year of the term for which he was convicted, may be allowed to go upon parole outside of the buildings and enclosure, but to remain while on parole in the legal custody and under the control of the state board of prison directors and subject at any time to be taken back within the enclosure of said prison; and full power to make and enforce such rules and regulations, to grant paroles thereunder and to retake and imprison any convict so upon parole is hereby conferred upon said board of directors."

The petitioner complained that the following rule adopted by the state board of prison directors denied him his rights under the act:

"Rule 5. Half term must be served. No application for parole shall be filed by the clerk until the prisoner shall have served one-half his sentence unless for some extraordinary reason the same shall have been recommended in writing by the warden with his reasons therefor and ordered filed by the affirmative vote of at least four members of the board."

The court held that the petitioner's contention was good, that he must be allowed to file his application for parole, which the board must consider, but might allow or deny it at discretion. We are

---

[1] Cal. Stats. 1913, p. 1048.
[2] (April 11, 1914), 47 Cal. 582.